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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re O.J., a Person Coming Under
the Juvenile Court Law.

B292351

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

(Los Angeles County
Super. Ct. No. 18LJJP00345)

Plaintiff,

v.

A.J.,

Defendant and Appellant;

O.J.J.,

Respondent.

APPEAL from an order of the Superior Court of Los Angeles
County, Steven E. Ipson, Judge. Affirmed.

Judy Weissberg-Ortiz, under appointment by the Court
of Appeal, for Defendant and Appellant A.J.

Karen Stalter, under appointment by the Court of Appeal,
for Respondent O.J.J.

A.J. (Mother) appeals from the court's dispositional order terminating dependency jurisdiction after a family law court awarded sole custody of her minor son, O.J., to his father, respondent O.J.J. (Father). Mother contends that the dependency court abused its discretion by terminating dependency jurisdiction because it was not in the child's best interest to do so. She asserts that protective issues existed at the time of disposition that warranted continued Department of Children and Family Services (DCFS) supervision of Father and O.J. and, thus, justified the court's retention of jurisdiction in the dependency case. As we explain, Mother's contentions lack merit and, accordingly, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Background and Prior Child Welfare Involvement with the Family*

The family in this matter includes Mother, Father, and the minor son O.J. (born in 2012). Mother and Father were married in 2010 and separated when O.J. was two years old.¹ When they separated, there was no family law custody order regarding O.J.; the parents reached an informal, oral custody arrangement for O.J. Initially the parents agreed that O.J. should live with Mother and visit Father for a few hours per week.² About a year before the current proceedings began, O.J.'s visits with Father had increased to weekend overnight visits with Father in his home.

¹ In 2011, Mother was convicted of inflicting corporal injury on Father and of vandalism. A protective order was also issued restraining Mother from contact with Father in connection with that incident.

² The parents divorced in 2018, and Father remarried.

In the last several years, DCFS received several referrals for O.J. In 2015, DCFS investigated a child welfare referral alleging emotional abuse of O.J. when he witnessed an altercation between Father and Mother's live-in boyfriend. DCFS closed the referral as inconclusive. In 2017, a child welfare referral alleged emotional abuse and general neglect of O.J. based on a domestic violence incident between Mother and her boyfriend while O.J. was present. The 2017 referral was also closed as inconclusive.

B. *Current Proceedings*

In May 2018, DCFS received two referrals alleging emotional abuse and general neglect of O.J. based on incidents of domestic violence between Mother and her boyfriend, which resulted in Mother's boyfriend's arrest. At the time, Mother reported to law enforcement that there had been five or more unreported incidents of domestic violence involving herself and her boyfriend. DCFS removed O.J. from Mother's custody and released him to Father who was considered non-offending.

Father reported to the social worker that O.J. had a bedroom at Father's home and that when O.J. visited with him on weekends, he took him to church, the movies, and the park. Father also helped O.J. with his homework and was involved in his school. Father also provided Mother with \$500 per month in child support. Father currently resides with his current wife and his paternal uncle, neither of whom was found to have a history of criminal activity or child abuse. Father reported that he was employed and able to provide for O.J.'s basic needs. Father denied any physical discipline of the child and denied that he had any medical conditions, or drug or alcohol dependency that would interfere with his ability to parent O.J. The DCFS social worker found Father's home to be appropriate, and that O.J. appeared comfortable with his Father.

Father conceded that in 2011 he was involved in an incident of domestic violence with Mother, but she was identified as the aggressor, and the incident resulted in a protective order restraining her from contacting Father. Father expressed concern about O.J.'s safety and well-being in Mother's home.

In early June 2018, DCFS filed a section 300 petition alleging O.J. was described by subdivisions (a) and (b)(1). As sustained,³ the petition alleged Mother and her boyfriend had a history of violent altercations in O.J.'s presence, the boyfriend had criminal convictions for domestic violence and untreated mental health problems, and Mother failed to protect O.J. by allowing the boyfriend to reside in the home.

At the detention hearing, the court ordered O.J. detained from Mother's custody and released to Father under DCFS supervision and granted Mother monitored weekly visitation and services.

The jurisdiction/disposition report revealed that O.J. appeared comfortable with Father and that the child denied any inappropriate touching or physical abuse by Father or Father's wife; O.J. stated that he felt safe with them. Father and O.J.'s stepmother reported that they disciplined O.J. by taking away privileges. Father denied using any physical discipline on the child.

Father reported that Mother had failed to take O.J. to school for a whole year, and therefore, he enrolled the child in school, took him to school on Fridays, and left him with Mother on Mondays. Father also reported that Mother's boyfriend had attacked Father

³ The original petition also contained an allegation that Father had physically abused O.J. based on the child's remark that on one occasion Father had slapped O.J. in the face with a sandal. The court subsequently struck the physical abuse allegation against Father after O.J. recanted and DCFS determined it to be unfounded.

in November 2015, when Father dropped off O.J. at Mother's home. On that occasion, Father observed that Mother's home smelled like marijuana, and he confronted her about it, and at that point, the boyfriend physically attacked Father and threatened him. Father called the police, who arrested the boyfriend.

Father admitted that he had concerns about his son while the child was with Mother and her boyfriend, but Father did not seek an order for full custody of O.J. at that time because he was "mindful" of the child—he wanted O.J. to "see both sides," and that initially, the boyfriend was not living full-time with Mother. Father stated that he had planned to seek full custody in the future, although he also knew it was going to be a "long-contested issue" with Mother. After attending the court proceedings in this dependency case, however, Father now had a "full picture of what was going on" in Mother's home and he wanted custody of O.J. and stated that he would ensure O.J.'s safety. Father reported that he took O.J. to a medical appointment in July 2018, and he was planning to take him for a dental appointment. Father planned to enroll O.J. in first grade, and have him undergo a mental health evaluation because of his exposure to domestic violence in Mother's home. He also planned to have O.J. assessed by the regional center because he showed signs of developmental delays.

DCFS recommended that O.J. be removed from Mother's custody and placed with Father and that the court continue dependency jurisdiction. The social worker expressed concern that Father appeared to be aware of Mother's boyfriend's violent behaviors and drug use in the child's home, but he failed to file for custody of O.J. or report these issues earlier. DCFS recommended that the court order that Father participate in family maintenance services, including a parenting program and individual counseling to address the case issues and protective parenting, and conjoint counseling with O.J.

On August 7, 2018, the court adjudicated the petition. The court sustained that allegation as to Mother and found that Father was non-offending. The court continued the disposition pending receipt of supplemental reports of O.J.'s health evaluations.

In late August 2018, DCFS submitted a supplemental report indicating that O.J. continued to reside in Father's home. Father had taken O.J. to be assessed by the regional center, and the results were pending. DCFS also reported that Father had arranged for O.J. to receive mental health services to help him control his behaviors, deal with mood changes, and work on his communication skills. DCFS continued to recommend that Father retain custody of O.J. and participate in family maintenance services, that Mother receive reunification services, and that the court continue jurisdiction in the case.

At the August 28, 2018 disposition hearing, the court declared O.J. to be a dependent child of the court under section 300, subdivision (b)(1), ordered him removed from Mother's custody and placed in Father's home.

Father's counsel and O.J.'s counsel both asked the court to terminate jurisdiction upon receipt of a family law custody order granting Father sole legal custody. Father's counsel argued that there was no need for Father to participate in parent education or individual counseling, given that he was non-offending and that DCFS had not demonstrated a need for such services.

Over DCFS's and Mother's objections, the court ordered jurisdiction terminated with a juvenile custody order to be prepared to award Father sole legal and physical custody, and ordered Mother to participate in case plan programs and monitored visitation. The court stayed the termination of jurisdiction order pending receipt of the custody order. On August 31, 2018, the court received and signed the custody order and lifted the stay of the termination of jurisdiction order.

Mother filed a timely notice of appeal.

DISCUSSION

On appeal, Mother contends that the court abused its discretion by terminating jurisdiction over O.J. because DCFS raised concerns that Father might not protect the child and that continued court jurisdiction and DCFS supervision was needed to ensure that Father complied with court orders. We disagree.

After a juvenile court asserts dependency jurisdiction over a child under section 300, it then considers the child's disposition, including placement. (§ 358, subd. (a); Cal. Rules of Court, rules 5.684(g) & 5.690.) Section 362, subdivision (a) also allows the court to "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child." The court's authority necessarily includes, in an appropriate circumstance, discretion to terminate dependency jurisdiction when the child is in parental custody, and no protective issue remains. (*In re Destiny D.* (2017) 15 Cal.App.5th 197, 207.) "If no substantial risk of harm exists once those restrictions [on the offending parent] are in place, and ongoing supervision is unnecessary, termination of jurisdiction is appropriate. [Citation.] To hold otherwise and conclude that court supervision must be continued, even absent a continuing risk of harm, . . . would be wholly at odds with the fundamental goal of the dependency system to return the child to his or her custodial parent and terminate dependency jurisdiction as soon as circumstances permit." (*Id.* at p. 208.) We review for an abuse of discretion the juvenile court's termination of jurisdiction at the disposition hearing. (*Id.* at p. 213 [finding juvenile courts termination of jurisdiction at disposition hearing and placement of a child with mother with monitored visits for father was not " 'arbitrary, capricious or patently absurd' " "].)

Here, the court did not abuse its discretion when it terminated jurisdiction, implicitly finding Father capable of meeting O.J.'s needs without assistance from DCFS or the court's continued jurisdiction. The DCFS social workers found that Father was employed and could provide for O.J., that Father's home was appropriate and that O.J. had a positive relationship and was safe with Father and stepmother. Other evidence showed that Father was protective of O.J. Specifically, when Father initially agreed to allow O.J. to reside with Mother, her boyfriend was not yet living in the home. In 2015, when Father learned of Mother's use of marijuana in the home, he confronted Mother about it. Father was attacked by Mother's boyfriend on that occasion, and Father summoned the authorities, who arrested the Mother's boyfriend. This incident also resulted in a referral to DCFS.

And although Father did not seek full custody of O.J. before the current dependency proceedings were initiated, Father explained that at the time he believed that Mother had "been keeping to the parental plan," and he explained that he was not fully aware of the domestic violence between Mother and her boyfriend until he attended the dependency proceedings. Once the dependency proceedings began, however, and Father learned of the conditions in Mother's home, he sought placement and sole legal and physical custody of O.J.

The record also disclosed that after O.J. was released to Father's custody at the detention hearing, Father attended to his son's academic, behavioral, and health needs. Father took O.J. for a medical exam and had planned to take him to ophthalmology and dental exams. Father followed DCFS's recommendation to have O.J. receive a mental health evaluation and services and for an assessment by the regional center. There was no evidence that Father demonstrated resistance to complying with necessary assessments and follow-up appointments for O.J.

Moreover, there is no evidence that Father is currently unable to keep O.J. safe in the absence of family maintenance services. Father was a non-offending parent; his conduct did not trigger the dependency proceedings. The services must be designed to eliminate the conditions that resulted in the minor's dependency; they cannot be ordered for parents simply because the parents might benefit from them. (See, e.g., *In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180 [requirement that non-offending parent participate in parent education was not supported by substantial evidence that mother's participation was necessary to prevent father from inflicting additional physical and emotional abuse on the minors].) Because the court's decision was supported by evidence in the record, the court's order terminating jurisdiction was not an abuse of discretion.

DISPOSITION

The orders of the dependency court are affirmed.

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ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.